

October 6, 2009



TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews, President

Councilmember Roger Berliner

Councilmember Valerie Ervin

Councilmember Michael Knapp

Councilmember Nancy Navarro

Councilmember Marc Elrich

Councilmember Nancy Floreen

Councilmember George Leventhal

Councilmember Duchy Trachtenberg



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1 COUNCIL PRESIDENT ANDREWS:

2 Good morning, everybody, and welcome to a meeting of the County Council. We're glad
3 you're here, and we're going to get started. We have a lot of different items today, and we
4 have a public forum tonight on Agricultural Land Preservation -- Easement Purchases,
5 which the PHED Committee will be leading the discussion on as it's reviewed. But first,
6 we're going to begin today with an invocation from Reverend Sherrill Lee Page of St. Mary
7 Magdalene Episcopal Church in Wheaton. Thank you, Reverend Page, and please join
8 me in standing for the invocation.

9
10 SHERRILL LEE PAGE:

11 Let us pray. Holy and gracious God, to whom all time, space, power, and authority belong,
12 grant to these leaders of the Montgomery County Council the wisdom to govern with
13 justice and mercy, that all your people may live in peace and harmony without fear or
14 threat. Open our hearts to provide homes for the homeless, food for the hungry, rest and
15 protection for the weary, hope for the poor and despairing, relief for the addicted and
16 discouraged, and compassion for the needs of all. Open our hearts and give us wisdom
17 and discernment in how to be stewards, the best stewards of the resources with which we
18 are entrusted. We pray all these things in your loving name. Amen.

19
20 COUNCIL PRESIDENT ANDREWS:

21 Amen. Thank you, Reverend Page. We're now going to move on to general business.
22 First will be announcement of agenda and calendar changes. Miss Lauer.

23
24 LINDA LAUER:

25 Good morning. In the District Council session this morning, the Zoning Text Amendment
26 09-03, Home Occupations and Residential Off-Street Parking, that item has been
27 deferred, and it will be rescheduled within the next couple weeks. The other thing is to -- I
28 just want to clarify that tonight's public forum on Executive Reg on the Agricultural Land
29 Preservation -- Easement Purchases; that forum is being conducted by the PHED
30 Committee.

31
32 COUNCILMEMBER KNAPP:

33 We would welcome -- we would welcome all participants.

34
35 COUNCIL PRESIDENT ANDREWS:

36 Glad to hear it's being led by the PHED Committee.

37
38 LINDA LAUER:

39 And then we did receive one petition, and that was supporting the Sligo Creek Golf
40 Course.

41
42 COUNCIL PRESIDENT ANDREWS:

43 Right. Yeah, I think -- well, actually, you would have had another meeting today if you
44 hadn't had the meeting tonight, but, but -- you know, you're in good shape. You can do



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1 two a day. All right. We'll look forward to hearing about it. It is an important issue, and I
2 would anticipate there will be a fair amount of interest in it, and it should be a good
3 turnout. It will be televised, I believe? Good. So we can all -- we can watch it, too. All right.
4 Let's see. Did you -- I'm sorry if I missed. Was -- can you repeat?

5
6 LINDA LAUER:

7 Yes. There was one petition.

8
9 COUNCIL PRESIDENT ANDREWS:

10 One petition. Very good.

11
12 LINDA LAUER:

13 Yeah, just one petition, and that was for the -- supporting the Sligo Creek Golf Course.

14
15 COUNCIL PRESIDENT ANDREWS:

16 OK. Thank you. All right. We're now ready to move on to action and approval of the
17 minutes of September 17, 21, and 22.

18
19 COUNCILMEMBER LEVENTHAL:

20 Approve the minutes.

21
22 COUNCIL PRESIDENT ANDREWS:

23 George. All right.

24
25 COUNCILMEMBER FLOREEN:

26 Move to approve the minutes, too.

27
28 COUNCIL PRESIDENT ANDREWS:

29 Moved by Councilmember Leventhal for approval of the minutes. Seconded by
30 Councilmember Floreen. And all those in favor, please raise your hand. That's
31 Councilmember Navarro, Councilmember Trachtenberg, Councilmember Floreen, myself,
32 Councilmember Knapp, Councilmember Ervin, Councilmember Leventhal. They are
33 approved, 7-0. We'll now move on to the Consent Calendar. Is there a motion for
34 approval?

35
36 COUNCILMEMBER TRACHTENBERG:

37 So moved.

38
39 COUNCILMEMBER KNAPP:

40 Second.

41
42 COUNCIL PRESIDENT ANDREWS:



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1 Moved by Councilmember Trachtenberg. Seconded by Councilmember Knapp. So we
2 have the Consent Calendar before us. Are there any comments about any items on the
3 Consent Calendar? Councilmember Ervin and then Councilmember Knapp.

4
5 COUNCILMEMBER ERVIN:

6 Thank you, Council President. I believe that on Item 2H, we need to waive the rules to
7 take up that. It's a procedural issue. The Council staff recommends that the Council waive
8 rules 3A, 3B, and 3E of the Council's Rules of Procedure, which govern advertisement
9 and solicitation, interviews and publication in the appointment process. The work of the
10 task force is time sensitive; therefore, swift action is required on the appointment of the
11 Sligo Creek Task Force.

12
13 COUNCIL PRESIDENT ANDREWS:

14 OK. Very good. So that's before us for action today. Thank you, Councilmember Ervin.
15 Councilmember Knapp.

16
17 COUNCILMEMBER KNAPP:

18 Thank you, Mr. President. I am introducing item number 2J with Councilmember Floreen.
19 As Councilmembers may recall, back before the Council took recess in the summer, a
20 recommendation had come to the Council from the Planning Board to reopen the
21 Clarksburg Master Plan to address certain water-quality issues in the Stage 4
22 development of that community. In the period between that meeting and the time we came
23 back into session a couple of weeks ago, I have had an opportunity to meet with a number
24 of representatives in the community to kind of get their sense as to what the best way to
25 proceed was -- if they were comfortable with reopening the Master Plan or if there were
26 other alternatives to explore, and what the community had indicated was -- and I want us
27 to be careful. Not "the community," since that's many thousand people, but the group that
28 we pulled together that was fairly representative of the community had indicated that they
29 would like to get a sense of the science behind water quality and what alternatives might
30 present themselves, as opposed -- before a decision was made to reopen the Master
31 Plan. And so what I'm introducing today is a resolution to form a Water Quality Working
32 Group that can report back to us, basically between the time we meet with the Planning
33 Board next week for a semiannual meeting and again in April, so that we can have a
34 better understanding of the various water quality options that -- and decisions that we
35 could make as we look at the protection of Ten-Mile Creek and development of Stage 4 in
36 Clarksburg. And this doesn't presuppose any particular outcome. Reopening the Master
37 Plan may still be something that the Council could decide we need to do, or other
38 alternatives, but this is an attempt to try to make sure that we make the best informed
39 decision possible. We're in the process right now of trying to identify people to serve on
40 the task force. We're looking at experts within County government, within the state, and
41 then folks who aren't necessarily in governmental entities, and I will follow up with
42 Councilmembers to share that list with them as we try to put it together. This all happened
43 over the course of the last couple weeks, so it's moving fairly quickly. I have talked to
44 some of my colleagues. I have not had a chance to talk to all of my colleagues and will



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1 hope to do so over the course of the next couple days to see if there are any questions
2 that people may have. But that's why we're introducing this today, and my goal is that we
3 can hopefully act upon it next week, prior to our worksession with the Planning Board so
4 we can have a discussion about it with them and identify if we need to make any
5 modifications to the work program for their participation in this workgroup. So I just wanted
6 to clarify that for my colleagues and provide that background. Thank you.

7
8 COUNCIL PRESIDENT ANDREWS:

9 OK. Thank you, Councilmember Knapp. Councilmember Leventhal.

10
11 COUNCILMEMBER LEVENTHAL:

12 Yeah. I'd just like to be added as a cosponsor on Item J, please.

13
14 COUNCIL PRESIDENT ANDREWS:

15 OK. So noted. All right. Thank you for that. And we are meeting next week with the
16 Planning Board for a semiannual meeting with them about the work program. Definitely
17 will take the request from Councilmember Knapp under advisement in terms of
18 scheduling. I'm not sure whether we do it next week or the week after. I have to think
19 about whether it makes sense to do it before we meet with them or right after, but within a
20 week or two.

21
22 COUNCILMEMBER KNAPP:

23 The only issue -- we had some conversation with the Planning Board, and the only issue
24 that has come up from that perspective is, it's not addressed in their work program, and so
25 they don't necessarily have the staff capability to participate in it, and so we may need to
26 make some modification to the work program -- which seems a bit arcane to me, but
27 nevertheless. So that may be what we need to do, so that was the only reason for trying to
28 make sure we have this in front of us, so that if we need to make modifications, that we
29 have an opportunity to do that.

30
31 COUNCIL PRESIDENT ANDREWS:

32 In any event -- I hear what you're saying. In any event, it's coming at a good time,
33 because we'll be talking about the two together. OK. All right. I want to note that regarding
34 Item A, we need to indicate that the date should be January 29 on the deadline for
35 applying. Correct? I'm looking at Linda McMillan. She's nodding. Rather than the date that
36 is listed, which is a different date. It's listed -- it's listed February 1. It should say January
37 29. So please note that for Item A on the resolution to approve the FY11 Council grants
38 process for application deadlines.

39
40 COUNCILMEMBER FLOREEN:

41 I thought we had decided to vote on that next week.

42
43 COUNCIL PRESIDENT ANDREWS:

44 That -- yes, you're right. That's correct. That's for introduction. So the -- it should read...



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1
2 COUNCIL PRESIDENT ANDREWS:

3 That's fine. The 29th. And then I want to note that we're reappointing to the Board of
4 Appeals Carolyn Shawaker. We want to thank her for her service and thank her for being
5 willing to continue serving in this very important position, and I believe that's the
6 comments I have. Any other comments on the Consent Calendar? Seeing none, all those
7 in favor of the Consent Calendar, please raise your hand. That's Councilmember Navarro,
8 Councilmember Elrich, Councilmember Leven -- Councilmember Trachtenberg,
9 Councilmember Floreen, myself, Councilmember Berliner, Councilmember Knapp,
10 Councilmember Ervin, Councilmember Leventhal. I should have just said unanimous. It's
11 unanimous, 9-0. All right. We're now going to move on to Item 3, which is action on a
12 resolution regarding Spending Affordability Guidelines for FY11 Capital Budget and FY11-
13 16 Capital Improvements Program. The MFP Committee has recommendations for the
14 Council, and I'll turn to the chair of the MFP Committee, Councilmember Trachtenberg.

15
16 COUNCILMEMBER TRACHTENBERG:

17 OK. Thank you, President Andrews. There is a unanimous recommendation from the MFP
18 Committee, and the recommendation was to approve General Obligation bond guidelines
19 of 325 million for FY11, for FY12, and 1.95 billion for FY11-16, and also to approve Park
20 and Planning bond guidelines of 7.5 million for FY11, 6 million for FY12, and 37.5 million
21 for FY11-16. And I would note for my colleagues that this is scenario number 4. The
22 outline of the specifics of that is on circle page 10. This was one of the recommendations
23 that was made by our staff -- Council staff -- Deputy Council Staff Director Dr. Orlin, and
24 the rationale, I think in a nutshell, of committee members was that this was a reasonable
25 number to work to. It would raise the level of GO bond funding in FY11 by over 10 million
26 over the amended FY09-14 CIP, and it would still retain the FY12 level. There was
27 general discussion about a potential adjustment again in February, which we have the
28 opportunity to do, and also one of the other elements of our conversation was that given
29 that construction costs are down, it was quite likely that we'd be able to squeeze more out
30 of the money that was identified. So again, it's a unanimous recommendation to go with
31 scenario number 4, and Dr. Orlin is with us if anyone has got any substantive questions.

32
33 COUNCIL PRESIDENT ANDREWS:

34 OK. Thank you, Councilmember Trachtenberg. Councilmember Ervin.

35
36 COUNCILMEMBER ERVIN:

37 I thank Chair Trachtenberg for her overview of the committee's discussion. I still have a
38 question of staff for scenario number 6, which is the recommendation of the Board of
39 Education. If you could describe again why that wasn't the -- the most favorable scenario.
40 I just needed to be clear on that as we move forward.

41
42 GLENN ORLIN:

43 Sure. Scenario 6, which is \$340 million a year, is similar to what the Board of Education
44 recommended. The board said in their testimony they'd like to see an increase in the



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1 guidelines of at least 10%, and so 340 million a year is 10.9% -- basically rounded to the
2 nearest 5 million, and we got to that 340 figure. When you look at 340 and you look at the
3 capacity analysis, which is on circle 12, what you'll see is that the debt service plus long-
4 term leases and short-term leases as a percentage of revenue, which you should be trying
5 to keep under 10%, not only increases above 10% in the last four years of the CIP --
6 which, actually, all of the scenarios do -- but it gets well into the second half -- upper half
7 of the 10s, if you will. It's 10.64%. So it's trending upward pretty quickly. We've been
8 keeping it under 10% every year for the last decade or more, but it's true that in the early
9 nineties, we used 11% effectively as the proxy, because nothing would stay below 10%.
10 Nevertheless, of the scenarios, this one, by far, goes closer to the 11% figure than the
11 others. The other two things which are more worrisome about this scenario than the
12 others is that two other guidelines or indicators that we never exceed are very close to
13 being exceeded with this scenario. The debt as a percentage of assessed value rises to
14 1.49% in Fiscal Year '15, which is literally a hundredth of a percent below the guideline,
15 and so the trend further out would bring this above 1.5 pretty quickly. And also, debt per
16 capita income, which has never exceeded 3.5%, as you can see in this table, reaches
17 3.48% by FY15 and 3.49% by '16. So dangerously close. A fourth indicator, debt per
18 capita, is exceeded by all the scenarios in every year. It should be \$1,900 per year, but
19 you can see the numbers, but this particular scenario goes up to almost 2,700 per year.
20 And the only indicator that would actually stay within -- safely within the range is the
21 payout ratio, which all of them do. So really, for this reason, I couldn't recommend going
22 this high.

23
24 COUNCIL PRESIDENT ANDREWS:

25 OK. Thank you, Mr. Orlin. Thank you, Dr. Orlin. OK. Councilmember Knapp.

26
27 COUNCILMEMBER KNAPP:

28 Thank you, Mr. President. I appreciate the efforts of the MFP Committee. I just want to try
29 and get a sense of... I don't know. I... I guess I'm struggling with, given what we've seen
30 as revenue projections, how does this fit within what the Executive branch had
31 recommended?

32
33 GLENN ORLIN:

34 The Executive recommended what's here characterized as scenario 5...

35
36 COUNCILMEMBER KNAPP:

37 Oh, OK.

38
39 GLENN ORLIN:

40 Which is 325 million in the first 2 years, which is the same as what the committee is doing
41 in those years.

42
43 COUNCILMEMBER KNAPP:

44 Right.



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1
2 GLENN ORLIN:

3 Then dropping back to 310 for the final 4 years.
4

5 COUNCILMEMBER KNAPP:

6 And what's the justification? Just that we don't know what the world looks like, and that
7 gives us...
8

9 GLENN ORLIN:

10 Well, Mr. Beach is here, if you'd like to ask.
11

12 COUNCILMEMBER KNAPP:

13 There he is. I'm sorry. I didn't see him.
14

15 COUNCIL PRESIDENT ANDREWS:

16 Good morning.
17

18 JOE BEACH:

19 Good morning, Mr. President.
20

21 COUNCILMEMBER KNAPP:

22 Sorry, Mr. Beach. I just didn't see you back there. I apologize.
23

24 JOE BEACH:

25 The Executive wanted to -- I mean, recognizing it is an increase, I believe, of 50 million
26 over the 6-year period. However, we did want to -- because the future is uncertain,
27 especially the revenue outlook, we did want to have some constraints on the additional
28 debt that we would issue, as well as being mindful of the indicators that Dr. Orlin pointed
29 out, as well. So we do recognize that we like to keep the amounts level over the years.
30 However, the current CIP, I would point out, does have some variations between the
31 years, as well. And one other thing to point out while you're making these decisions is, in
32 addition to the indicators would be the impact on debt service, the annual debt service
33 payment we would make. For instance, under scenario 6 -- and this is in relation to the
34 Executive's recommended budget -- by FY16, the annual debt service payment would be
35 12 million higher than it would be under scenario 5.
36

37 COUNCILMEMBER KNAPP:

38 Where are you looking?
39

40 JOE BEACH:

41 OK. I'm looking on, say, page -- circle page 12.
42

43 COUNCILMEMBER KNAPP:

44 OK.



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1
2 JOE BEACH:

3 On the debt service impact section, it has "assumed issue size," and then below that, it
4 has "GO bond debt service." If you follow that out to year FY16, that would be 353.7
5 million, and if you -- comparing that, say, to scenario number 5, at 300 -- on page 11,
6 circle page 11 of 341. So just another thing to keep in mind is, when you go those size of
7 issues, you're going to have a significantly larger annual debt service payment.

8
9 COUNCILMEMBER KNAPP:

10 And given the scenario that the committee has recommended -- or actually even what the
11 Executive has recommended, with 325 this year and next year -- how does -- where does
12 the short-term debt that we are planning to issue for the certain activities that we've been
13 talking about, the other purchases, fit within this debt service impact?

14
15 JOE BEACH:

16 They are -- they are included within the GO bond debt service already, so they're already
17 assumed within these levels.

18
19 COUNCILMEMBER KNAPP:

20 So the debt service impact of that -- of those carrying costs are captured within this chart,
21 or that lower portion of the chart?

22
23 JOE BEACH:

24 Yes. Yes.

25
26 COUNCILMEMBER KNAPP:

27 OK. Given what we've seen for revenue projections, or what you've shown us, and given
28 the fact that we known in the next -- within the next 18 months, we start to see a tail-off in
29 property tax just because we start to see kind of a catch-up with the Homestead Tax
30 Credit, do we see -- I'm... I am sympathetic to the argument that land is cheap and capital
31 is fairly inexpensive at this point, but I'm also concerned that, given what we've seen from
32 numbers, that we don't necessarily have, at least -- the out years actually probably look
33 better, in 4, 5, 6, than the next 2 years, and so I'm kind of intrigued as to how we got to the
34 rationale that we go the first 2 years up and then reduce over the last 4 years.

35
36 JOE BEACH:

37 Because most of our programming needs, or the highest competition, is in those first 2
38 years of the CIP. That's when the needs are known the most.

39
40 COUNCILMEMBER KNAPP:

41 Right.

42
43 JOE BEACH:



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1 And so, traditionally, we have higher set-asides in the out years. Now, of course, this is
2 not -- this is an affordability test, it's not a needs test, and as a practical matter, the
3 programming for specific projects happens in those first 2 years of the CIP, and since our
4 -- what we know about capital needs declines over the 6-year period, we have larger set-
5 asides, so...

6
7 COUNCILMEMBER KNAPP:

8 Well, I guess that's my concern, is this is an affordability analysis, and given at least --
9 what you talked to us about over the last few weeks -- I guess it was just last week we did
10 the fiscal impact -- it would seem that from an affordability perspective, even though the
11 demands are higher in the first 2 years, from an affordability perspective, it would seem as
12 though we have less certainty as to what our revenue projections are actually going to
13 look like, and we might want to take a more conservative approach.

14
15 JOE BEACH:

16 Sure. But also, there are more favorable construction conditions right now. I'm not sure
17 how long that's going to last. A lot of that is dependent on the economy and demand in the
18 commodity markets, the labor markets, as well.

19
20 COUNCILMEMBER KNAPP:

21 I don't disagree, but that gets to the need, as opposed to the affordability.

22
23 JOE BEACH:

24 No. I think it gets to affordability, as well, because just what we're seeing in terms of bid
25 and land prices. They're more favorable in the short term rather than long term.

26
27 COUNCILMEMBER KNAPP:

28 OK. Thank you.

29
30 COUNCIL PRESIDENT ANDREWS:

31 Thank you, Councilmember Knapp. OK. I don't see any other lights on, so we're ready
32 then to take action on the MFP recommendation regarding the resolution regarding
33 Spending Affordability Guidelines for FY11 Capital Budget and FY11-16 Capital
34 Improvements Program. All those in favor, please raise your hand. And that is everybody.
35 Unanimous. Thank you.

36
37 GLENN ORLIN:

38 That would be on both sets of guidelines, correct?

39
40 COUNCIL PRESIDENT ANDREWS:

41 That would include both.

42
43 GLENN ORLIN:

44 OK.



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1
2 COUNCIL PRESIDENT ANDREWS:

3 All right. We are ahead of schedule for our District Council session. I don't see any
4 problem in doing the introductions, but is there any -- Dr. Orlin, is there any reason we
5 should wait on Item D, Schematic Development Plan Amendment?
6

7 GLENN ORLIN:

8 It's not mine, but if you want to spend a little more time, I can spend 2 minutes about some
9 of the other things in this packet, because I want to highlight.
10

11 COUNCIL PRESIDENT ANDREWS:

12 All right. Go ahead.
13

14 GLENN ORLIN:

15 It's not an action. The main thing I want to point out is that one of the things we've been
16 working on with Finance and OMB are more up-to-date projections on impact taxes,
17 because that also is something that the agencies need to know before they go in to
18 develop their budgets. And just to highlight, the bottom of page 4 and the middle of page 5
19 of this packet, that the impact tax projections that the Executive is going to be using are
20 much lower than what's been currently programmed in the CIP. So you'll see that in
21 school impact tax, revenue estimates for FY11 --
22

23 COUNCIL PRESIDENT ANDREWS:

24 Which page are you on?
25

26 GLENN ORLIN:

27 Bottom of page 4 of the packet. Instead of it being about \$20 million, it would be a little
28 under 8. FY12, instead of being 22 million, it would be about 8.5, and carrying out to the
29 remaining years would also be much lower. Transportation impact tax -- just as severe
30 drop. FY11, we're assuming -- this is the middle of page 5 -- \$13.8 million is what we've
31 been assuming for FY11. We're going to be assuming really more like \$4 million for FY11,
32 and \$4 million or \$5 million rather than 14.3 in FY12, et cetera, carrying out. These are
33 based on what we're actually collecting, with a moderate -- a very modest increase, and
34 the goal here is to try to program impact taxes such that it would be very unlikely that the
35 collections would drop below these numbers. If it comes in a little bit higher, great; we can
36 figure that out at reconciliation, but it's a different approach to programming impact taxes.
37 There's a lot more history in here on that. I don't want to take up the Council's time, but I
38 just wanted to alert you to this. And then finally, we'll be, in the CIP this next year, having
39 a new display in terms of PDFs to represent slippage. A lot of the PDFs in the current CIP
40 and the past CIPs have really been a bit misleading because they've shown construction,
41 perhaps, of a project being finished in the CIP when it's not even under construction yet in
42 the real world, and a lot of that is because nobody wanted to double count expenditures
43 against spending affordability, but with the fix that I describe in the packet that basically
44 OMB and Finance came up with, which I concur with, will -- we can have it both ways. We



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1 can actually have a PDF which actually shows when expenditures now are really
2 expected to happen, yet take credit for the fact that for spending affordability purposes,
3 we've already counted some of that money. So that's all I really wanted to say, I'll make
4 sure you heard that.

5
6 COUNCIL PRESIDENT ANDREWS:

7 Well, thank you for pointing that out.

8
9 GLENN ORLIN:

10 Thanks.

11
12 COUNCIL PRESIDENT ANDREWS:

13 Those are very different estimates than previous ones and reflect the experience of the
14 last couple years. OK. Well, I think we can at least begin the District Council session, and
15 we may not have to wait for any other reasons, but let's start with Item 4, which is
16 introduction of Zoning Text Amendment 09-09, Planning Board Enforcement, sponsored
17 by the District Council at the request of the Planning Board. The action is a resolution to
18 establish a public hearing for November 17 at 7:30. Is there a motion?

19
20 COUNCILMEMBER TRACHTENBERG:

21 So moved.

22
23 COUNCIL PRESIDENT ANDREWS:

24 So moved by Councilmember Trachtenberg.

25
26 COUNCILMEMBER ELRICH:

27 I second.

28
29 COUNCIL PRESIDENT ANDREWS:

30 Seconded by Councilmember Elrich. All those in favor of establishing the public hearing
31 for November 17 on Zoning Text Amendment 09-09, please raise your hand. And that is
32 unanimous. OK. Next is Item 5, introduction of Subdivision Regulation Amendment 09-03,
33 Enforcement Amendments, sponsored by the District Council President at the request of
34 the Planning Board. The resolution is to establish a public hearing for November 17 at
35 7:30 PM. Is there a motion?

36
37 COUNCILMEMBER ERVIN:

38 So moved.

39
40 COUNCIL PRESIDENT ANDREWS:

41 Moved by Councilmember Ervin. Seconded by Councilmember Elrich. Don't see any
42 discussion. All those in favor of establishing a public hearing for November 17 at 7:30 on
43 Subdivision Regulation Amendment 09-03, please raise your hand. And... Councilmember
44 Leventhal?



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1
2 COUNCILMEMBER LEVENTHAL:

3 Yes.

4
5 COUNCIL PRESIDENT ANDREWS:

6 OK. Unanimous to establish the public hearing for 09-03. Next is Item 6, introduction of
7 Zoning Text Amendment 09-10, I-3 Zone - Hospitals, sponsored by the PHED Committee.
8 The resolution is to establish a public hearing for November 10 at 1:30 PM. I see
9 Councilmember Knapp has a comment or question.

10
11 COUNCILMEMBER KNAPP:

12 Thank you, Mr. President. I just wanted to clarify this and put some material on the record.
13 As a part of the Master Plan, it was recommended that we proceed with this Zoning Text
14 Amendment, making a hospital a permitted use in the I-3 Zone if a Certificate of Need was
15 granted to a hospital in such -- with property in such zone. I just wanted to be able to say
16 that this is -- I guess everyone is aware two of our larger healthcare institutions in the
17 County are in the process of having dueling Certificates of Need processes underway --
18 Holy Cross and Adventist. We as a Council obviously have no particular role in that except
19 for the land use piece, and I think this Council and everyone on it has been very mindful of
20 the role that each of these institutions play in our County, and we are trying to walk a very
21 thin line of making sure that we are not pro or against anybody, and I think that this is --
22 just to clarify, is something that was a follow-up from the Master Plan that was
23 recommended. It is not to say we are more supportive or less supportive of any of the
24 institutions. It was just something that we'd indicated should get done and cleaned up in
25 the Master Plan as a follow-up item, so I just wanted to clarify that and put that out there
26 so that no one can say that this is better or worse for either of the institutions. It is not. It is
27 contingent upon anyone receiving a Certificate of Need approval, so that's what the
28 contingent piece is. So I just wanted to clarify that.

29
30 COUNCIL PRESIDENT ANDREWS:

31 OK. Thank you for the clarification, Chairman Knapp. And with that, is there a motion to
32 establish the public hearing?

33
34 COUNCILMEMBER LEVENTHAL:

35 Let's have a public hearing.

36
37 COUNCIL PRESIDENT ANDREWS:

38 Councilmember Leventhal says let's have a public hearing for November 10 on Zoning
39 Text Amendment 09-10 at 1:30, and seconded by Councilmember...

40
41 COUNCILMEMBER FLOREEN:

42 Absolutely.

43
44 COUNCIL PRESIDENT ANDREWS:



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1 Floreen. All right. OK. All those in favor of having that public hearing on November 10 at
2 1:30 on Zoning Text Amendment 09-10, please raise your hand. That's unanimous. It's
3 scheduled. OK.

4
5 COUNCILMEMBER TRACHTENBERG:
6 We love public hearings.

7
8 COUNCIL PRESIDENT ANDREWS:
9 All right. Mr. Zyontz, is there any reason to wait on Item D till 10:15? Item D is --

10
11 JEFF ZYONTZ:
12 I don't think so. The Hearing Examiner -- excuse me? Oh, there is a client?

13
14 ?????FRANCOISE CARRIER:
15 The developer is here, and the Hearing Examiner is here.

16
17 COUNCIL PRESIDENT ANDREWS:
18 Is everybody here who we expect to be here? FRANCOISE CARRIER:
19 I think so.

20
21 JEFF ZYONTZ:
22 I thought you were saying no. FRANCOISE CARRIER:
23 Do you expect your attorney, Mr. Pettit?

24
25 RICHARD PETTIT:
26 He's here. FRANCOISE CARRIER:
27 Oh, sorry.

28
29 COUNCIL PRESIDENT ANDREWS:
30 Very good. OK. FRANCOISE CARRIER:
31 I was looking for Bob.

32
33 COUNCIL PRESIDENT ANDREWS:
34 So we think everybody is here who would be coming. OK. All right. Let's go ahead and
35 move on, then, to that item, Item D, which is action on Schematic Development Plan
36 Amendment 09-3. The applicant is the Pettit Companies. Property is a 15-acre property
37 known as Flower Hill, located at 18205-D Flower Hill Way in Gaithersburg. The action is to
38 amend the Development Plan from DPA 07-2, and we have recommendations from the
39 Planning staff and Planning Board to approve. The Hearing Examiner had no action on
40 this. Correct? FRANCOISE CARRIER:
41 Correct. That's correct.

42
43 COUNCIL PRESIDENT ANDREWS:
44 All right. Mr. Zyontz, would you like to set the stage here?



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1
2 JEFF ZYONTZ:

3 No. I actually have no opinion again, because this is a matter that follows the regulatory
4 process through the Planning Board. In this case, nobody requested a public hearing, so
5 the recommendation basically is transmitted from -- from the Planning Board up to you. So
6 it's yours for action or not.

7
8 COUNCILMEMBER LEVENTHAL:

9 I move approval, Mr. President.

10
11 COUNCIL PRESIDENT ANDREWS:

12 OK.

13
14 COUNCIL VICE PRESIDENT BERLINER:

15 Second.

16
17 COUNCIL PRESIDENT ANDREWS:

18 All right. So move approval by Councilmember Leventhal. Seconded by Council Vice
19 President Berliner, who has his light on. Would you like to make a comment?

20
21 COUNCIL VICE PRESIDENT BERLINER:

22 I just wanted to clarify, I'm assuming, by virtue of what I read with respect to this, that
23 there is literally no controversy regarding this matter. FRANCOISE CARRIER:

24 There could not be less controversy.

25
26 COUNCIL PRESIDENT ANDREWS:

27 Well, that's...

28
29 COUNCIL VICE PRESIDENT BERLINER:

30 There you go.

31
32 COUNCILMEMBER FLOREEN:

33 Had to happen.

34
35 COUNCIL PRESIDENT ANDREWS:

36 All right. All right. Law of averages -- happens once in a while. OK. Very good. And this is
37 a -- a roll call vote is not required, I see, according to my notes on this, so we'll just ask all
38 those in favor of Schematic Development Plan Amendment 09-3, please raise your hand.
39 And that is unanimous, all 9 Councilmembers. Approved, 9-0. Thank you. OK. All right.
40 We have one more item on the District Council session for this morning, and that is Item
41 8, action on Zoning Text Amendment 09-06, Town Sector (TS) Zone - Minimum area. The
42 PHED Committee is recommending approval, and I'll turn to the chair of the PHED
43 Committee, Chairman Knapp, for the committee's report.
44



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1 COUNCILMEMBER KNAPP:

2 Thank you, Mr. President. Again, this is one further element from the Germantown Master
3 Plan, or Sector Plan. This was sponsored on behalf of the committee. The ZTA would
4 amend the Town Sector Zone to allow a TS-zoned area to be reduced below 1,500 acres.
5 Such a reduction would only be allowed by the Council's approval of a Sectional Map
6 Amendment. A Sectional Map Amendment may only be filed by the District Council to
7 implement the zoning recommendations of a Master Plan or to correct inaccurate
8 depictions of zoning boundaries. There are 2 areas in the County zoned TS -- Churchill in
9 Germantown, and 2, Montgomery Village. Only the Churchill area has a Sector Plan that
10 recommends reducing the acreage of TS zoning. This is important because there has
11 been a concern that by modifying the TS Zone, it could have an impact on Montgomery
12 Village. Mr. Zyontz has had many conversations, I have had many conversations, and this
13 has been drafted in such a way as to make sure that this has no effect on Montgomery
14 Village but only impacts the Churchill area of Germantown, as recommended in the
15 Master Plan, and we believe that that is in fact the case. And so the committee
16 recommends, 3-0, the adoption of ZTA 09-06.

17
18 COUNCIL PRESIDENT ANDREWS:

19 OK. Thank you, Chairman Knapp. I don't see any questions or comments on the
20 committee's recommendation, so we are ready to vote. This is a roll call vote. Will the
21 clerk please call the roll?

22
23 CLERK:

24 Miss Navarro.

25
26 COUNCILMEMBER NAVARRO:

27 Yes.

28
29 CLERK:

30 Mr. Elrich.

31
32 COUNCILMEMBER ELRICH:

33 Yes.

34
35 CLERK:

36 Miss Trachtenberg.

37
38 COUNCILMEMBER TRACHTENBERG:

39 Yes.

40
41 CLERK:

42 Miss Floreen.

43
44 COUNCILMEMBER FLOREEN:



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1 Yes.

2
3 CLERK:

4 Mr. Leventhal.

5
6 COUNCILMEMBER LEVENTHAL:

7 Yes.

8
9 CLERK:

10 Ms. Ervin.

11
12 COUNCILMEMBER ERVIN:

13 Yes.

14
15 CLERK:

16 Mr. Knapp.

17
18 COUNCILMEMBER KNAPP:

19 Yes.

20
21 CLERK:

22 Mr. Berliner.

23
24 COUNCIL VICE PRESIDENT BERLINER:

25 Yes.

26
27 CLERK:

28 Mr. Andrews.

29
30 COUNCIL PRESIDENT ANDREWS:

31 Yes. Zoning Text Amendment 09-06 is unanimously approved, 9-0, by the County Council
32 -- by the District Council. Next item, F, has been deferred. We're not -- that's the Zoning
33 Text Amendment 09-03, Home Occupations and Residential Offstreet Parking. It's not
34 going to be going back to the PHED Committee. We're going to come back to it in a week
35 or two for action. And that takes us through the District Council session. We're now on to
36 the Legislative session, day number 38, Item 10, introduction of bills. We have one bill for
37 introduction, Bill 34-09, Forest Conservation - Enforcement, sponsored by the Council
38 President at the request of the Planning Board. A public hearing is scheduled for
39 November 17 at 7:30 PM, and without objection, that bill is introduced. Item 11 is our final
40 item, call of bills for final reading. Bill 23-09, Unused Vehicles - Storage. PHED Committee
41 is recommending approval, and I'll turn to the chairman of the PHED Committee,
42 Councilmember Knapp, for the committee's report.

43
44 COUNCILMEMBER KNAPP:



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1 Thank you, Mr. President. Bill 23-09, Unused Vehicles - Storage, was sponsored by the
2 Council President at the request of the County Executive on May 5. This was a part of a
3 broader package of recommendations brought to us from the County Executive by a Code
4 Enforcement Working Group that the County Executive had convened. The bill that had
5 been deferred today was also a part of that package. I -- as you've noticed, we've had a
6 lot of things going on in the PHED Committee, and I am actually going to turn to our staff
7 to walk us through the pieces of this -- of this piece of legislation. Mr. Drummer?

8
9 ROBERT DRUMMER:

10 Thank you. This bill would make changes in the current law for storage of unused
11 vehicles. Currently, there's 2 different provisions in the Code that cover unused vehicles.
12 One is in -- in chapter 26, an unused vehicle is defined as rubbish, which is, you're only
13 permitted to keep on your property for up to 30 days, unless it's in an enclosed container,
14 and the second place is in chapter 48, solid waste -- I may have gotten that backward. But
15 the -- no, is -- chapter 48, solid waste, is -- it specifically says you can only store an
16 unused vehicle on your property outside of a building or other shielded area for up to 90
17 days. The bill would take the 2 sections of the Code which are in conflict and change it
18 back into one section of the Code that covers the storage of unused vehicles and would
19 reduce -- and would go with the 30 days as a maximum time you can store an unused
20 vehicle on your lot. It does also provide that the director of Housing and Community
21 Affairs would have the authority, upon request, to extend that period -- extend the 30-day
22 period for good cause, and the bill has examples of good cause. And that's what the bill
23 would do. The committee looked at some statistics in this area, and out of all of the areas
24 in code enforcement that -- the committee received statistics from the Executive branch
25 on numbers of complaints. This was the leading area where there were the most
26 complaints, both filed and violations found. And as you can see on page 3 of the memo,
27 there's a table showing the statistics that went, going from FY05 through FY09, and you
28 can see there's a definite upward trend leading to FY09 -- a total -- total cases being
29 1,035, and so this does appear to be an area that the -- that the people in the County are
30 concerned about. And the final issue that was looked at by the committee was, there was
31 some testimony about restoring historic vehicles and whether that -- there should be an
32 exception to allow that, and the committee decided to leave the bill the way it is, which
33 gives the director of DHCA discretion to make that change -- to authorize an extension on
34 showing of good cause. And that's the bill.

35
36 COUNCIL PRESIDENT ANDREWS:

37 OK. Thank you, Mr. Drummer, for that summary of the bill. Councilmember Leventhal.

38
39 COUNCILMEMBER LEVENTHAL:

40 As I read the bill, you've listed the criteria by which the director of DHCA may grant a
41 good-cause exception, but you didn't say "includes but not limited to" on line 33 on page
42 3, and so it's not clear to me that if you have someone who's restoring a historic T-Bird,
43 that Mr. Nelson or his successors would have any leeway beyond A, B, C, and D. So I do
44 have some sympathy. I was at Taste of Bethesda Saturday, and we do have a lot of these



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1 owners of beautiful historic vehicles in Montgomery County. The Chevy Chase Chevrolet
2 was stacked, you know, 3 levels, with these historic cars, and most of them were
3 residents of Montgomery County, so... I'm concerned about overreaching with some of
4 these code enforcement things and clamping down on activities that we think are
5 legitimate and even -- that we would even want to encourage. So -- so could we consider
6 "includes, but is not limited to," or could we take a look -- that would be on line 33 -- or
7 could we take a look at an exception, even understanding that it is the discretion of the
8 director, for restoration of an historic vehicle? I just -- it seems like this is a legitimate issue
9 to me.

10
11 ROBERT DRUMMER:

12 We would read the "good cause includes" to not -- that list not to be all exhaustive, so if
13 you say "includes but not limited to" would be the same -- would be the same way.

14
15 MICHAEL FADEN:

16 In our usage, "includes" means "not limited to." It's different from "means." In other words,
17 if it said "good cause means," it would be only these things. The word "includes" we've
18 consistently used in exactly the sense that you're looking for.

19
20 COUNCILMEMBER LEVENTHAL:

21 Well... All right. I'm just imagining these conflicts that arise in neighborhoods, where
22 somebody has got a beautiful pink Cadillac and they want to restore it, and their next-door
23 neighbor doesn't like the look of it and they want to impose their community standards on
24 someone else's property, and I just wonder -- that seems like one example of a legitimate
25 -- of a legitimate case where someone might have an unused vehicle on their property for
26 more than 30 days. That seems legitimate to me. Did the committee discuss this in any
27 detail, or the exception for the -- I see the packet adds as an option here on page 4 either
28 number 2 or number 3 as those options, and it says the committee considered them. What
29 was the committee's view? They just didn't want to get into it?

30
31 UNKNOWN SPEAKER:

32 I see Mr. Nelson cares to speak to this.

33
34 RICHARD NELSON:

35 The comment I was going to make -- one, I don't think there's a problem in terms of the
36 language you suggested -- "includes but is not limited to." Secondly, we did have a
37 discussion about it, and it's our view, at least from our experience, in most cases those
38 who are restoring historic or antique vehicles are doing them in enclosed spaces. So it's
39 not really that much of an issue, but we need to have the ability to, in fact, grant the
40 exception, but we'd not like to see a blanket thing for that because, you have a 20-year-
41 old car, somebody says, "I'm restoring it," and it's sitting in the yard.

42
43 COUNCILMEMBER LEVENTHAL:

44 Right. Well, the way this is written, the director "may grant..."



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1
2 RICHARD NELSON:

3 Yes.

4
5 COUNCILMEMBER LEVENTHAL:

6 So I guess my question would be, going to the memo, Mr. Drummer's memo, on page 4,
7 there were options considered that would create an exception for restoration of historic
8 vehicles or "add historic vehicle restoration as an example of good cause if the owner can
9 show the project will be complete in a definite period of time." That would still be item -- so
10 number 3 would just be a blanket exception. That wouldn't be the director's discretion. But
11 option 3 -- I'm sorry. Option 2 would not be under the director's discretion. Option 3 would
12 give discretion to the director to make that judgment call. If you have an old, rusted jalopy,
13 and they're not apparently doing any work on it, and the neighbors don't like it, then you
14 could say, "No, we don't agree. You don't appear to be restoring it." However, if indeed the
15 owner seemed to have the competency to restore a vehicle and was going to do it within a
16 definite period of time, then the department would have that discretion. I think I like that
17 option. I don't know what my -- I don't know if the committee considered it. It says it did.

18
19 COUNCILMEMBER KNAPP:

20 I will let my colleagues speak for themselves. I think the conversation that we had around
21 this topic really was one of that the complaints that had been brought before the County
22 were such that, as Mr. Nelson indicated, that were more trying to come up with ways just
23 to keep the vehicle in the yard, as opposed to legitimate historic preservation -- that most
24 of those were being taken place indoors. And so, given what the focus of this had been
25 that had been presented by the Executive branch, which was to address the complaints
26 which actually had the most number of citations, giving the director the flexibility as we did
27 in the language seemed to be the best way to get out of that, because they seemed to
28 have the ability to exercise judgment to determine where there was a real case and where
29 there wasn't, as opposed to trying to come up with a blanket exception, which then
30 created more reasons for our folks to go out and continue to check up, and we're trying to
31 -- at least the Executive branch, as I understand it, was trying to streamline this activity,
32 and it seemed as though there was actually a fairly compelling case made here. I think the
33 issue that you raised is legitimate. We did discuss it. We just -- we ended up back at the
34 point, though, with the director having discretion.

35
36 COUNCILMEMBER LEVENTHAL:

37 Well, I wonder if my colleagues would be amenable to going back to this option 3 on page
38 4, to add historic vehicle restoration as an example of good cause if the owner can show
39 that the project will be complete in a definite period of time. I mentioned the Taste of
40 Bethesda. The weekend before, I know my friend Marc Elrich is very familiar with Greg,
41 who runs the Summer Delights ice cream store. He put on a car show right in downtown
42 Takoma Park. I mean, I think there's a very active community of these historic-car lovers.
43 We all benefit -- you know, Phil rode in a T-Bird recently in a parade. I mean, I think -- I



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1 wouldn't want to choke off our ability as politicians to ride these gorgeous cars, you know,
2 in the Gaithersburg or Takoma Park parade, so...

3
4 COUNCILMEMBER KNAPP:

5 I think the committee would likely be amenable. There weren't strong feelings. It was a
6 matter of just trying to glean the appropriate intention from the Executive branch.

7
8 COUNCILMEMBER LEVENTHAL:

9 What's I'm trying -- I would like -- as I read through this and as I listen to this discussion
10 about code enforcement, I think we have to be very careful about choking off legitimate
11 activities by, you know, one or two homeowners' perception of what is an appropriate
12 community standard. There are community standards. We want to have a nice quality of
13 life in the neighborhoods, but we also have some tolerance for people's ability to do what
14 they want in their own homes, and it's striking that balance. So I would move that, then --
15 option 3 on page 4.

16
17 COUNCILMEMBER KNAPP:

18 Second. Second.

19
20 COUNCIL PRESIDENT ANDREWS:

21 OK. So it's moved by Councilmember Leventhal to add option 3 that's on page 4, to add
22 historic vehicle restoration as an example of good cause if the owner can show that the
23 project will be complete in a definite period of time. Seconded by Councilmember Knapp.
24 Is there discussion on the amendment? Anybody want to discuss it? No? Council Vice
25 President Berliner.

26
27 COUNCIL VICE PRESIDENT BERLINER:

28 Well, I do support the amendment. I am among those who have owned and taken great
29 pleasure in owning historic vehicles. I've had a couple of 1960 Volvos -- 544s -- wonderful
30 cars -- and old Jaguars, and as a friend of mine said, "The Jaguar is a beautiful car. Just
31 don't confuse it with transportation." But -- and my understanding is that it, from what we
32 are hearing from Mr. Nelson, is that most people who have historic cars actually do do the
33 work in enclosed spaces, because it's a serious undertaking, it's expensive undertaking,
34 and so they represent what I perceive to be a very small fraction of the problem to begin
35 with. And those who need to do it outdoors, if you are, in fact, working on a historic
36 vehicle, you don't want it outdoors very long, because rust is the biggest factor with
37 respect to historic vehicles. So it is not a wise investment to have a restoration project
38 taking place outdoors. It's not what you would do. But there may be circumstances, limited
39 circumstances, in which this sort of discretion is appropriate, and so I am supportive of it. I
40 have a broader question with respect to the wording that Councilmember Leventhal
41 identified, and I do want to make sure that this works as intended. Circle 3, on lines 31,
42 32, and 33, it does say that the director "may" grant, which obviously allows discretion, but
43 then it defines good cause -- "Good cause includes" -- and my concern with respect to that
44 language is that by definition, if good cause includes it, then does the -- does the director



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1 have the discretion to reject a petition that by definition is, quote, good cause? I just find it
2 to be a little awkward in terms of its wording, that we are defining certain things as
3 statutorily good cause and yet retaining discretion in the director to reject an application.
4 So I need to understand the relationship of that discretion with the statutory declaration
5 that these are good causes.

6
7 ROBERT DRUMMER:

8 Well, what we're doing is putting in standards for the director to follow in determining
9 what's good cause. These are examples. They're not all-inclusive. But if somebody, you
10 know -- the actual -- if somebody tries to use, let's say, C, "the owner demonstrates
11 extreme financial hardship" -- I mean, there's still a lot of discretion in determining whether
12 factually he really has demonstrated extreme financial hardship, and that's why the vehicle
13 is sitting on the lot. I mean, there's still discretion in there in determining whether any of
14 these items is, in fact, shown or demonstrated. But these are, as examples, if you can
15 show them, then you have a pretty strong argument that you're entitled to get a waiver.

16
17 COUNCIL VICE PRESIDENT BERLINER:

18 I guess I would be more comfortable, as a matter of statutory language, if it read, "good
19 cause may include but is not limited to," as opposed to a declaration that if you show this -
20 - if you show that, it automatically is good cause, is the way I read this in the moment. I
21 think the language should say "good cause may include but is not limited to." Therefore, it
22 makes it very clear that we aren't making an a priori determination that if you show this,
23 that it limits the discretion of the director.

24
25 MICHAEL FADEN:

26 We wouldn't have -- just in terms of general construction, we wouldn't have a problem with
27 "may include," but because we've consistently used the word "include" to mean "includes
28 but is not limited to," if you add that in this case, it casts doubt on all the other times we've
29 got "includes" in the law. So I think to allow the kind of discretion you're talking about,
30 "may include" would work.

31
32 COUNCIL VICE PRESIDENT BERLINER:

33 So, as between the "including but not limited to," you're concerned, if we start down that
34 path, that it will have the effect of questioning our prior, which I don't believe we need to
35 do in light of your statement, but I would, then, ask that we modify this language so that it
36 says "may include."

37
38 COUNCIL PRESIDENT ANDREWS:

39 Let's take that up separately. I hear you, and I think it makes sense, too, but let's first
40 resolve -- let's first deal with the first amendment that we have before us. Are there any
41 other comments on the amendment proposed by Councilmember Leventhal?
42 Councilmember Floreen.

43
44 COUNCILMEMBER FLOREEN:



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1 Thank you. We were all very sympathetic to this issue in committee. However, I did want
2 to share one piece of information that at least sort of changed my mind, which is, it turns
3 out what a historic vehicle is, is something that is 20 years old. And that made me feel
4 really old, for one thing, so I found that offensive.

5
6 COUNCIL PRESIDENT ANDREWS:

7 Ha ha ha! That would make you very historic.

8
9 COUNCILMEMBER FLOREEN:

10 And I believe we had some conversation about that, as well we should. But it also -- so it's
11 not the, you know, the 1966 whatever-it-is that we're talking about. We're talking about
12 cars -- clunkers -- as well, and that was part of the concern. You know, we've been getting
13 a lot of e-mail from the neighborhoods about the legislation that's been pulled from the
14 agenda for today having to do with tow -- well, it's really vehicles, storage on -- parked on
15 property, and a lot of that, I think, is associated with car repair activities in residential
16 neighborhoods. And so that was one of the concerns, at least that I had had about this.
17 This is not about, I don't think, about the Chevy Chase cars, historic cars experience,
18 which was just glorious this weekend. It's about a different kind -- it can be a different kind
19 of vehicle, and I gather this definition is a state definition, what's historic? Bob?

20
21 ROBERT DRUMMER:

22 Yeah. It's based on the NVA, but just a reminder that the vehicles that we're talking about
23 that are unused vehicles are not registered, or registered but totally inoperable.

24
25 COUNCILMEMBER FLOREEN:

26 So it's not like they --

27
28 ROBERT DRUMMER:

29 So the vehicles that are registered with the state as historic vehicles are not covered in
30 this bill.

31
32 COUNCILMEMBER FLOREEN:

33 Right. So they're just other cars in that category, so that put a little different angle on it, at
34 least for me.

35
36 COUNCIL PRESIDENT ANDREWS:

37 I see. So if 20 years is historic, what triggers prehistoric?

38
39 COUNCILMEMBER FLOREEN:

40 Exactly.

41
42 ROBERT DRUMMER:

43 21.



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1 COUNCIL PRESIDENT ANDREWS:

2 Right. Councilmember Elrich is next, then Councilmember Leventhal.

3
4 COUNCILMEMBER ELRICH:

5 I think Nancy hit on one of the complicating factors. The other one is going to be
6 determining what historic restoration is, because if it's a 21-year-old...oh, say, Ford
7 Econoline van sitting in the yard, they're going to have to decide whether this person is
8 replacing the transmission and the clutch, whatever, or are they doing genuine restoration.
9 Restoration usually means, I think the restorers would argue, taking the thing back to
10 cherry condition -- you know, original paint, original paint colors, restoration of the interior,
11 and all those things, and so we're going to be asking these guys to decide whether this is
12 sitting in the yard because it's just being fixed or whether this is sitting in the yard because
13 it's an historic restoration. I think that's part of why -- while my inclination was to say,
14 what's the harm in letting historic vehicles get restored, it was real easy to see how this
15 could morph into something other than historic vehicles, particularly when the definition
16 was 20 years. Then we postulated, what happens if our housing gets declared historic
17 after 20 years? And that would totally mess things up even further, and I just think it's -- I
18 think it's a difficult call, but I'm sympathetic to using this language. You're going to have to
19 make a determination to get a 30-day extension, and maybe if the problem is solved in 30
20 days, whether it's historic restoration or just fixing the clutch, that's fine and well, and, you
21 know, we'll all move on from there. But it is not as easy as I'd like it to be.

22
23 COUNCIL PRESIDENT ANDREWS:

24 Thank you, Councilmember Elrich. Councilmember Leventhal.

25
26 COUNCILMEMBER LEVENTHAL:

27 You know, I appreciate sometimes we spend almost no time on enormously complex
28 subjects that we don't understand, and then something we really do understand, like an
29 old car sitting in somebody's driveway, we're spending a lot of time because we can
30 actually get our minds around it. I would just urge adoption of the amendment. I don't think
31 either of the problems that my friends Nancy or Marc have identified are any worse of a
32 problem if the director has the discretion that my amendment would offer. And cars do
33 become historic over time, and you have to preserve them, so a 20-year-old car may not
34 seem historic to us today, but if you don't preserve it now, 20 years from now, it won't be
35 around. So...anyway. And the director has discretion. It is important that when you see
36 these beautiful historic cars driving around, they have a license plate to say "historic." So
37 they're registered, and they're not unused. So you're talking about a short period of time in
38 which a hypothetical buyer might purchase an unused vehicle and restore it and then
39 would have to register it after a certain period of time, which would be negotiated with the
40 director of DHCA. Even under my amendment, it wouldn't sit on the yard forever. And
41 finally, with respect to being restored inside buildings, I don't have a garage. We had a
42 garage, and we converted it into my wife's business.

43
44 COUNCIL PRESIDENT ANDREWS:



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1 You don't have a shed, either, right?

2
3 COUNCILMEMBER LEVENTHAL:

4 I don't have a garage or a shed. I don't have unused vehicles.

5
6 COUNCILMEMBER TRACHTENBERG:

7 But you have a front lawn.

8
9 COUNCILMEMBER LEVENTHAL:

10 I have 2 vehicles that are in use. But the point is, some people don't have garages, you
11 know? They just -- they don't have them.

12
13 COUNCIL PRESIDENT ANDREWS:

14 Right. Sure. Thank you, Councilmember Leventhal. Council Vice President Berliner, and
15 then we'll vote on the amendment.

16
17 COUNCIL VICE PRESIDENT BERLINER:

18 The only thing I was going to perhaps add and ask my colleagues for their consideration is
19 whether or not we want a report from Mr. Nelson after a year as to how often he has
20 exercised his discretion to grant a waiver with respect to this so that we understand what's
21 happening in the real world and is this a problem, and if so, for you to report back to us in
22 a year. So I would propose, if you will, after we dispose of the Leventhal amendment, I
23 have then 2 other modest amendments -- one to change the language to "may," and two,
24 to ask for a report back from the director in a year to advise us as to the extent to which
25 he's used his discretion and any recommendations he has based on that.

26
27 COUNCIL PRESIDENT ANDREWS:

28 OK. Thank you. We'll come back to that in just a minute. So the vote will be on the
29 amendment proposed by Councilmember Leventhal to add, after line 38, it looks like, "add
30 historic vehicle restoration as an example of good cause if the owner can show the project
31 will be complete in a definite period of time." All those in favor of the amendment, please
32 raise your hand. And that is unanimous. The amendment is adopted, 9-0. OK. Council
33 Vice President Berliner.

34
35 COUNCIL VICE PRESIDENT BERLINER:

36 And then I would offer as one amendment that we modify the language on line 33 that
37 currently says "good cause includes," and I would insert the word "may" -- "good cause
38 may include," striking "s."

39
40 COUNCIL PRESIDENT ANDREWS:

41 OK. Is there a second for that?

42
43 COUNCILMEMBER NAVARRO:

44 Second.



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1
2 COUNCIL PRESIDENT ANDREWS:

3 Second by Councilmember Navarro. All those in favor of that amendment, please raise
4 your hand. That is unanimous, 9-0. Very good.

5
6 COUNCIL VICE PRESIDENT BERLINER:

7 And one further amendment that we ask for a report at the end of a year with respect to
8 the director's experience in granting these exceptions and any recommendations he has
9 as a result of those experiences.

10
11 COUNCIL PRESIDENT ANDREWS:

12 OK. Second? Who'd like to second?

13
14 COUNCILMEMBER TRACHTENBERG:

15 Second.

16
17 COUNCIL PRESIDENT ANDREWS:

18 Seconded by Councilmember Trachtenberg. Moved by Council Vice President Berliner.
19 Councilmember Leventhal has a question or comment.

20
21 COUNCILMEMBER LEVENTHAL:

22 Just to clarify, we'd be satisfied with a one-page memo.

23
24 COUNCILMEMBER FLOREEN:

25 Right.

26
27 COUNCIL PRESIDENT ANDREWS:

28 Right. A brief report will be fine.

29
30 COUNCILMEMBER FLOREEN:

31 Feedback.

32
33 COUNCIL PRESIDENT ANDREWS:

34 All right. OK. All right. I don't see any other comments on the amendment. All those in
35 favor of the amendment as described by Council Vice President Berliner, please raise
36 your hand. That is unanimous, and that's adopted. All right. I don't see any other lights, so
37 I think we're ready to vote on the bill as amended, so I'll ask the clerk to please call the roll
38 on Bill 23-09.

39
40 CLERK:

41 Ms. Navarro.

42
43 COUNCILMEMBER NAVARRO:

44 Yes.



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1
2 CLERK:
3 Mr. Elrich.
4
5 COUNCILMEMBER ELRICH:
6 Yes.
7
8 CLERK:
9 Miss Trachtenberg.
10
11 COUNCILMEMBER TRACHTENBERG:
12 Yes.
13
14 CLERK:
15 Miss Floreen.
16
17 COUNCILMEMBER FLOREEN:
18 Yes.
19
20 CLERK:
21 Mr. Leventhal.
22
23 COUNCILMEMBER LEVENTHAL:
24 Yes.
25
26 CLERK:
27 Ms. Ervin.
28
29 COUNCILMEMBER ERVIN:
30 Yes.
31
32 CLERK:
33 Mr. Knapp.
34
35 COUNCILMEMBER KNAPP:
36 Yes.
37
38 CLERK:
39 Mr. Berliner.
40
41 COUNCIL VICE PRESIDENT BERLINER:
42 Yes.
43
44 CLERK:



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1 Mr. Andrews.

2
3 COUNCIL PRESIDENT ANDREWS:

4 Yes. Bill 23-09 is approved, 9-0, by the County Council, and that completes our morning
5 session. We're going to have lunch -- a lunch meeting with the WSSC Commissioners --
6 they're providing the water -- at noon in the sixth-floor conference room, and then at 1:30,
7 we have several public hearings. 2:00, PHED Committee meets on growth policy, and at
8 7:30, the PHED Committee meets again to conduct the public forum on Building Lot
9 Termination Easement Program. Thank you, everybody.

10



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1 COUNCIL PRESIDENT ANDREWS:

2 Good afternoon, everybody, and welcome to public hearings for the County Council. We
3 have 4 public hearings this afternoon, and the first is on Agenda Item 12, which is the
4 FY11 WSSC Spending Control Limits. It is a public hearing concerning the spending
5 control limits that the Montgomery and Prince George's County Councils must set for the
6 FY11 budget of the Washington Suburban Sanitary Commission. The process requires
7 that the Councils set annual ceilings on Washington Suburban Sanitary Commission's
8 new debt, debt service, water and sewer operation expenses, and the maximum average
9 rate increase. Persons wishing to submit additional material for the Council's
10 consideration should do so before the close of business on Thursday, October 15, 2009.
11 A Transportation, Infrastructure, Energy, and Environment Committee worksession is
12 tentatively scheduled for Monday, October 19, at 10:15. There are no speakers for this
13 hearing, so the public hearing is closed, and the T&E Committee will meet on the 19th.
14 Our next item is Agenda Item 13, Bill 33-09, Inspector General-slash-Attorney. This bill
15 would authorize the Inspector General to employ or retain an independent attorney and
16 generally amend the county law regarding the Inspector General. Persons wishing to
17 submit additional material for the Council's consideration should do so before the close of
18 business on Friday, October 9, 2008. Another Management Fiscal Policy Committee
19 worksession is gonna be scheduled for early November, and if you have questions about
20 timing on any committee meetings, you can call 240-777-7900 for information. I believe
21 we have the Inspector General here today, who indicated he would like to testify on the
22 bill. I don't see him in the room at the moment, but I know he's in the building because I
23 saw him just a little while ago, so we'll keep that public hearing open and move on to
24 Agenda Item 14 and deal with that next, which is a public hearing on a special
25 appropriation to the Maryland-National Capital Park and Planning Commission's FY10
26 capital budget of \$2,214,000 for the Montgomery Regional Office for renovations.
27 Subsequent to advertising this hearing, the Council was advised that the Planning Board
28 has withdrawn its request for this appropriation. We received a letter to that effect from
29 Chairman Hanson recently, and so that is noted. There are no speakers for the hearing,
30 and the public hearing is closed. And our final public hearing for the afternoon--again,
31 we're keeping the Inspector General one open for the time being--is Agenda Item 15, a
32 public hearing on an amendment to the Maryland-National Capital Park and Planning
33 Commission's FY09 through '14 capital improvements program of \$1,385,681 for
34 SilverPlace/MRO headquarters mixed-use project to change the funding source from
35 certificates of participation to county current revenue. Persons wishing to submit additional
36 material for the Council's consideration should do so before the close of business on
37 Friday, October 16, 2009. A Planning, Housing, and Economic Development Committee
38 worksession will be scheduled at a later date, and we have one speaker for this hearing,
39 and he is Royce Hanson, the chairman of the Montgomery County Planning Board. Good
40 afternoon.

41
42 ROYCE HANSON:

43 Good afternoon, Mr. President, members of the Council. Thank you. You have the letter
44 from us explaining the reasons for this because this funding, which supported the



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1 charrette and the due diligence and preparation for a good bit of the entitlement for the
2 headquarters building for Park and Planning, was to have been funded through
3 certificates of participation issued when approval was received for the final design and
4 construction of the building. Since you have asked us to postpone for at least 5 years any
5 final design and construction, we cannot fund this with certificates of participation. It has to
6 be funded with current revenues. This is an additional expense that otherwise would not
7 have to be borne, but under those circumstances, it has to be, so we're sorry to be here
8 and to ask that this be done, but we have no recourse.

9
10 COUNCIL PRESIDENT ANDREWS:

11 We understand and appreciate your being here to inform us of what you have concluded
12 regarding the situation, so thank you, Mr. Chairman. That concludes the public hearing on
13 Agenda Item 15, and we're now gonna go-- Actually, we're gonna take a very brief break
14 to note that-- I see. We're gonna take just a very brief break to note and I'm gonna make
15 an announcement that our former colleague Tom Perez was just confirmed today, recently
16 confirmed today as the new Assistant Attorney General for Civil Rights. There's a picture
17 of our former colleague that is taped to the microphone, which, I believe, is being filmed
18 by-- It is a picture that was taken a few years back, maybe when our former colleague was
19 in law school. He looks a little younger in the picture than he does now, but our best
20 wishes to Tom on this achievement and the recognition of his many outstanding qualities--
21 his leadership qualities, his legal skills, his commitment to civil rights, which we all know,
22 very, very well--and we're delighted that the U.S. Senate has confirmed him, and we know
23 he'll do great things as the new Assistant Attorney General for the United States, so
24 please join me in a round of applause. OK. We're now going to go back to Agenda Item
25 13. We've been joined by the Inspector General, and I'm gonna ask him to come up at this
26 time to speak on Bill 33-09. Good afternoon, Mr. Inspector General.

27
28 THOMAS DAGLEY:

29 Good afternoon.

30
31 COUNCIL PRESIDENT ANDREWS:

32 Go ahead. We're interested, of course, to hear your views about the bill before us, which
33 is Bill 33-09.

34
35 THOMAS DAGLEY:

36 I apologize for being a few minutes late. As you know, I've been in the Inspector General
37 community for almost all of my working career, first at the federal level, then at the state,
38 now at the county level. What I have come to appreciate, having been the Inspector
39 General for 4 1/2 years here in Montgomery County, as the complexity, as the quality, and
40 as the potential of the projects that we get involved with increase, there is no question in
41 my mind that the bill that has been introduced to provide independent legal services to the
42 Office of the Inspector General is an appropriate next step in the process of having a fully
43 effective Office of Inspector General, and with regard to some specific projects that we're
44 working on right now, it actually will continue to be a handicap for my office up to the point



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1 where we would have the ability to rely on independent legal services to help us with our
2 strategies, help us with our planning efforts, help us with our execution of projects that are
3 both being addressed in a formal sense, audits and reviews, as well as some of those that
4 fall into that category of fraud, waste, and abuse allegations, the latter oftentimes being
5 those circumstances where we need to have independent legal services at the table, if
6 you will, beginning with the planning process and with the strategizing to not only make
7 sure that we do things in a legal way and an appropriate way, but also to make sure that
8 we don't miss opportunities to really get to the truth of allegations that have been brought
9 to our attention. 2 or 3 years ago when I had been the Inspector General for just a year or
10 two, there weren't as many needs as there are today, but I would say, just as we're
11 working on 3, 4, or 5 projects right now, those independent legal services are just an
12 integral part of us doing our work the way that you would want us to and the way that the
13 IG community would expect us to.

14
15 COUNCIL PRESIDENT ANDREWS:

16 Well, thank you, Mr. Dagley, and the chair of the MFP Committee, Councilmember
17 Trachtenberg, we guess, she could not be here this afternoon for the public hearing, but
18 she's informed me a second worksession will be scheduled for early November with action
19 by the committee, and then the full Council will take up the measure in November, as well,
20 so we look forward to addressing this issue, and thank you for the good work that you're
21 doing as Inspector General and for your testimony today.

22
23 THOMAS DAGLEY:

24 Thank you.

25
26 COUNCILMEMBER ERVIN:

27 I do have a question, Council President Andrews.

28
29 COUNCIL PRESIDENT ANDREWS:

30 Sure. Councilmember Ervin.

31
32 COUNCILMEMBER ERVIN:

33 Yesterday we did have a lot to say about this bill in MFP Committee. I, for one, do not
34 believe we need a second worksession, and, noting that there are 5 cosponsors on this
35 bill, I would hope that my colleagues would agree that it is one of those situations where
36 we need to move this because, I believe, it is in the best interest of the county and of the
37 county government that the independence of the office is what we're seeking to provide,
38 and so one of the things that was noted yesterday was a question that came up about the
39 fiscal impact of the bill, and we received in the packet the information from the Office of
40 Management and Budget that this bill would have no fiscal impact on the county because
41 the FY10 budget for your office includes \$127,000 for outside consulting services and that
42 you indicate that this current appropriation would be sufficient to cover the retention of
43 outside counsel as authorized by the bill. We also heard from the County Attorney, Leon
44 Rodriguez, yesterday, who said that your office and his office actually work quite closely



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1 together and it's a good working relationship and that the bill is supposed to address
2 extraordinary circumstances when you may need to request outside legal counsel, and I
3 just wanted you to expound on that, if you would.

4
5 THOMAS DAGLEY:

6 I would be the first to acknowledge that the Office of Inspector General in Montgomery
7 County is obviously not a Federal Office of Inspector General. However, with the Federal
8 Offices of Inspector General kind of leading the way, going back to the late Seventies, on
9 the concept of the Inspector General, what has happened is that there is now legislation at
10 the federal level that I think will be good guidance for us, and its language goes, and I'm
11 paraphrasing, along the lines that the counsel for a statutory Inspector General will do one
12 of two things--either report to the Inspector General directly or to another Inspector
13 General. That's not necessarily the language or the options that Montgomery County has
14 in the bill, nor that they need to be considered. However, the concept there is very
15 powerful, and that is that the independence of the counsel that's dealing with IG matters
16 needs to be as independent as the Inspector General himself or herself. With regard to
17 the County Attorney, we have discussed on numerous occasions specific cases and then
18 in a more broad fashion those projects where, in my opinion, it would appear that it's very
19 difficult for the County Attorney to wear two or more hats, especially in those cases where
20 there may be allegations, credible allegations about activities or the expenditure of county
21 taxpayer money where perhaps the director of a department, perhaps the Executive
22 branch more broadly, and the OIG all have to be represented simultaneously. That has, in
23 my opinion-- I can't speak for the County Attorney. That has, in my opinion, caused
24 problems and will continue to cause problems for the Office of the Inspector General for
25 the reasons that I've tried to articulate today. It's not-- Another way of saying that is that
26 other IG communities, going back to the late Seventies and working through the Eighties
27 and Nineties with the passage of legislation in these different jurisdictions, they've
28 recognized those circumstances and have dealt with them over time in much the same
29 way that the bill that's been introduced would deal with it here in Montgomery County.

30
31 COUNCIL PRESIDENT ANDREWS:

32 Thank you. Thank you, and as a cosponsor of the measure, I agree with the points that
33 you have made, and the Council will be addressing this bill in a timely manner within the
34 next few weeks. Thank you. Councilmember Leventhal.

35
36 COUNCILMEMBER LEVENTHAL:

37 Thank you, Mr. Dagley. I think that last point is an interesting and valuable one, and I
38 understand it if your office is doing an inquiry into a department head and the County
39 Attorney has to represent that department head, then that creates an argument for the
40 access to outside counsel that you've been asking for, so I appreciate that point, and you
41 and I have been playing phone tag. I'm sorry I didn't make myself more accessible, so if
42 you still want to meet, you may be talking with other councilmembers, but I'm available to
43 you. Just give me, you know, a couple days' notice to get on my schedule, and we'll get
44 together. What I also wanted to thank you for and just do this publicly and let my



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1 colleagues know because of some of the work that you've been doing, there has been
2 some uncertainty among nonprofit service providers about the degree to which they have
3 to submit documentation to comply with contract monitoring, and I believe that those
4 nonprofit service providers have been making their concerns known to many of my
5 colleagues, so I just wanted to make sure that my colleagues were aware and that I'm
6 very appreciative that both the HHS Department and you will be addressing a public
7 gathering of nonprofit service providers convened by the HHS and MFP Committees on
8 the evening of October 29. I think it's at 7:30 at night, and we want to get the word out as
9 widely as possible. I believe it's your goal that we pursue both objectives, that is, to be
10 accountable to ensure that public dollars are spent for the purposes for which they're
11 appropriated and also to make sure that our requirements are administrable and that our
12 nonprofit service providers are able to provide documentation in a way that is convenient,
13 reasonable, and not overly burdensome because we want them to concentrate on
14 meeting people's needs, not submitting reams and reams and reams of Xerox copies, and
15 I know that you share that goal, and I know that you're working with the HHS Department
16 so that when the department and you present on October 29, that the message that both
17 of you present to the nonprofit service providers about what an audit might look like, what
18 sort of documentation is adequate to fulfill the requirements of accountability, that you'll
19 have a consistent message with the department. So, I'm really stating that this is
20 occurring. I'm very interested in making sure that this takes place. I'm grateful to you for
21 participating, and I want to, you know, let the word go forth far and wide because I do
22 want to reassure these very important charitable organizations that are much better suited
23 to meeting the needs of people who have great needs sometimes than government is that
24 we want to work with them. We want requirements that are administrable and
25 understandable and possible to comply with. So, that's more of a statement from me than
26 a question, but if you want to reply, you may. I appreciate your willingness to participate
27 on October 29 and also your willingness to work with the HHS Department in advance of
28 October 29 to think through how we may make these compliance requirements
29 administrable and fair and reasonable for our contractors.
30

31 THOMAS DAGLEY:

32 Thank you. I do believe that we continue to work well with the Department of Health and
33 Human Services, the fiscal people, the fiscal analysts who are responsible for looking at
34 the same type of documentation that we are should we audit or review a particular vendor.
35 I'm very confident that the accounting standards that we will share on the 29th, our
36 standards and the Department of Health and Human Services' standards from an
37 accountings perspective, will not be different. We're, in a sense, talking the same
38 language from an accounting standpoint, so our standards on projects we've looked at, in
39 my view, have not been, nor will they be, different than what other fiscal analysts would
40 expect in terms of the standard for documenting the expenditure of taxpayer money.
41

42 COUNCIL PRESIDENT ANDREWS:



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1 Thank you, Mr. Dagley. Thank you, Councilmember Leventhal, and I think that forum
2 should be an excellent event, and we'll continue to publicize it. I think it'll have a real
3 useful purpose. Councilmember Floreen.

4
5 COUNCILMEMBER FLOREEN:

6 Thank you. I had a couple points. Thanks for being here, Mr. Dagley. On the point that Mr.
7 Leventhal has been discussing with you-- and I know he's gonna have this meeting in a
8 couple of weeks-- my perception is that this is an issue that would apply across the board
9 to all kind of contracts, so will you be presenting recommendations in that regard, not just
10 Health and Human Services, but all procurement matters?

11
12 THOMAS DAGLEY:

13 I believe-- Correct me if I'm wrong. I believe the audience on the 29th will be primarily
14 those from DHHS and those that have contracts, but, speaking for the Office of the IG, I'd
15 be happy to participate in not only this session, but any others where it would be valuable
16 for contractors to hear what our auditing process, our auditing methodology would be like
17 in terms of fiscal transactions.

18
19 COUNCILMEMBER FLOREEN:

20 Sure. Well, however, I just wanted to make the observation that I think that our goal
21 should be standardized review processes across the board, and I think this a great first
22 step, so we look forward to your advice on that matter. I--

23
24 THOMAS DAGLEY:

25 One last-- I'm sorry. One quick comment on that. Even though it's not a fiscal set of
26 procedures, I think the standards of the Office of Procurement oftentimes represent a
27 common denominator because the terms and conditions of contracts executed by the
28 Office of Procurement will have a fiscal expectation and a fiscal set of standards in place
29 in terms of submitting invoices, so that's another set of standards that kind of levels the
30 playing field, if you will, for contractors. Regardless of which department may have
31 requested that contract, it's the Office of Procurement that actually executes all of them.

32
33 COUNCILMEMBER FLOREEN:

34 Mm-hmm. Right, right, and that's why I raise that point. My next point really was a
35 question for Councilmember Ervin with respect to the committee conversation. Did the
36 committee request further information, or were there further matters to be resolved?

37
38 COUNCILMEMBER ERVIN:

39 There were no other matters to be resolved. I sit on a committee with Councilmember
40 Navarro...

41
42 COUNCILMEMBER FLOREEN:

43 I'm sorry. The chair isn't here.
44



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1 COUNCILMEMBER ERVIN:

2 So the chair is not here, but we vetted all the issues that were in the committee packet,
3 and I'm not quite sure why we need another worksession.
4

5 COUNCILMEMBER FLOREEN:

6 Well, I see that it's scheduled. It says on my piece of paper here, "Action is tentatively
7 scheduled for next week." Mr. President, if you could work with the chair of the committee
8 to bring that to us, unless there's some outstanding matter, this is important. We should
9 get on with it.
10

11 COUNCIL PRESIDENT ANDREWS:

12 Mm-hmm. Well, as a cosponsor of the measure, I agree it's important. I'll talk to the chair
13 of the MFP Committee, and we'll move it along in a timely manner.
14

15 COUNCILMEMBER FLOREEN:

16 That'd be great. I hope we can do it next week. Thanks.
17

18 COUNCIL PRESIDENT ANDREWS:

19 Thank you. Councilmember Elrich.
20

21 COUNCILMEMBER ELRICH:

22 Couple questions. One is, if you had authority to spend the money for outside counsel,
23 why haven't you done so so far?
24

25 THOMAS DAGLEY:

26 As I understand it, and I might need some assistance from our legislative attorney here,
27 not only the County Charter but the IG law calls for the requests for outside counsel to go
28 through and be approved by the County Attorney, so the way it's set up now is that I would
29 need to go through the County Attorney to not only request but then to receive that
30 independent counsel. That hasn't happened up to this point. The requests have occurred,
31 but the actual receipt of independent counsel has not, and where we use the term
32 "independent counsel," the bill that's been introduced differentiates the definition of that
33 when it's compared to the current...
34

35 COUNCILMEMBER ELRICH:

36 So, if I follow up with this with the Executive branch and I ask, "Do you have a formal
37 request for your office getting outside counsel?" they will say, "We had that request, and
38 we denied it."
39

40 THOMAS DAGLEY:

41 Formal memorandum and a formal request has not occurred. What has occurred are
42 numerous discussions with the County Attorney himself or, in some cases, with an
43 Associate County Attorney.
44



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1 COUNCILMEMBER ELRICH:

2 I'll just say that if you know the process and the process is you make a request and you
3 haven't made a request, that kind of argues that I don't know that this doesn't work the
4 way you want it to work just the way it is if you haven't asked and been turned down.

6 THOMAS DAGLEY:

7 The level of detail that I would need to provide and I have provided verbally but I would be
8 unwilling to provide in a memorandum that might be subject to disclosure, it makes the
9 distinction in what we're talking about. The level of detail as to why I would need
10 independent counsel to address a potential conflict of interest, I, up to this point, have
11 been unwilling to put that in a written memorandum. I'd be happy to discuss some of those
12 issues with any councilmember in a closed session.

14 COUNCILMEMBER ELRICH:

15 I'd like to hear those issues discussed with the County Attorney. I guess my other question
16 is, what is the relationship between your office and the State's Attorney? Because you
17 don't bring charges. The State's Attorney would be the one that ultimately bring charges,
18 so what's the process that gets us from where you are to the State's Attorney taking any
19 action?

21 THOMAS DAGLEY:

22 What I've said in the last 3 or 4 annual reports that I've issued is, we do have a measure
23 of performance that describes joint investigations with prosecutors or law enforcement
24 agencies. That's a very meaningful performance measure to us. Our responsibility as an
25 Inspector General and an extension of the County Council would be to develop and, when
26 it's appropriate, present evidence of a possible violation of criminal law to a prosecutor or
27 for a law enforcement agency and then be available to work with them jointly, but they
28 would be the ones to determine if the case is gonna proceed and what our role is in Office
29 of Inspector General would be. We've done that on numerous occasions over the past 4, 4
30 1/2 years, and that's a process that I think is appropriate for the Montgomery County
31 Office of Inspector General.

33 COUNCILMEMBER ELRICH:

34 And it's been resolved by the State's Attorney taking action?

36 THOMAS DAGLEY:

37 Either taking action or deciding not to, and it's not limited to the State's Attorney here in
38 Montgomery County. There are 3 other prosecutors in the state of Maryland that also
39 could potentially have responsibility for, or interest in, actions that come to our attention.

41 COUNCILMEMBER ELRICH:

42 OK. My last question is, don't you really need subpoena power? I mean, my
43 understanding--you and I have had numerous discussions about this--is, I could give you
44 10 attorneys. You can't compel an answer. You can put your attorneys in a room, and you



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1 can ask all the questions you want, and nobody really has to answer you, let alone answer
2 you honestly, and I thought from our previous conversations that what you really needed
3 was the ability to subpoena testimony that would hold up, that you could use as the basis
4 of a case, as a basis of evidence, and doesn't this leave you short of having that
5 authority?

6
7 THOMAS DAGLEY:

8 I don't believe so. It's my understanding that the IG law currently gives me the authority to
9 take sworn affidavits and also issue subpoenas.

10
11 COUNCILMEMBER ELRICH:

12 To county employees or to contractors, as well?

13
14 THOMAS DAGLEY:

15 To county employees and for matters that relate to the expenditure of Montgomery County
16 taxpayer funds.

17
18 COUNCILMEMBER ELRICH:

19 OK, because we've had this conversation, and you've raised the subpoena issue, so if
20 you're saying you don't need subpoena power now, that's different than conversations
21 we've had before.

22
23 THOMAS DAGLEY:

24 And I want to try to be clear and consistent. To the extent that I may see value and believe
25 that a case is far enough along that it would be beneficial to take a look or subpoena the
26 bank records of an individual, I don't view that as within the authority of the IG law as it's
27 been written. That is very much within the authority of a law enforcement organization or a
28 Prosecutor's Office, and I believe, or it was my intent, in the discussions that we have had
29 in the past, I've been using that hypothetical bank account example to illustrate where our
30 authority to issue subpoenas as an IG begins or ends and where the authority of a law
31 enforcement agency or Prosecutor's Office begins.

32
33 COUNCILMEMBER ELRICH:

34 OK. Thank you.

35
36 COUNCIL PRESIDENT ANDREWS:

37 Thank you, Councilmember Elrich. Councilmember Navarro.

38
39 COUNCILMEMBER NAVARRO:

40 I just wanted to-- Going back to the conversation regarding the session that is going to be
41 held where you're going to participate as well as the Director of HHS, some of the
42 conversation that I just heard again described seems to point out that somehow you are
43 going to set the standard for the fiscal monitoring or the standards that are required of our
44 contractors, and in reality, that is the responsibility of Procurement, and it's the



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1 responsibility of the department heads to make sure that there is a consistent set of
2 standards or at least basic for whatever vendors are receiving taxpayers' money, so I
3 hope that the public is clear that it's not as if now we're gonna have the Inspector General
4 setting the standards for basic expectations of accountability when vendors receive
5 taxpayers' money, and I'm assuming that the requirement as the expectation is that each
6 department has a certain standard and if they're not so consistent, then that's an issue
7 that I think needs to be addressed, and I know HHS is doing a great job in moving towards
8 that place, so I hope that when we have that discussion in that session, the nonprofits are
9 not under the impression that the Inspector General now is the one setting up those basic
10 standards. So, I just wanted to clarify that because that was my understanding all along,
11 that this is just a way to send that message, if anything.

12
13 THOMAS DAGLEY:

14 Excuse me. And to make sure that that's going to be the case, we do have a meeting
15 scheduled next week. I have one with DHHS and DHHS with us to go through those
16 standards and make sure that the standards, or I think it's the strategic plan that the
17 Director of DHHS has had in place for a little bit more than a year, those expectations are
18 very similar to, if not identical, to the same standards that we would have as in OIG, and
19 again, the point being that when the contractors hear each of our respective presentations
20 or a joint presentation, they really should not be hearing anything different. They should
21 be hearing a consistent message, and that's what is important for us to coordinate,
22 beginning in a discussion next week.

23
24 COUNCILMEMBER NAVARRO:

25 Great. Thank you, and also, I mean, just, obviously, I'm one of the cosponsors of this bill,
26 and I don't have any other questions that I think need to be addressed in another session
27 of an MFP Committee, but I know Councilmember Ervin yesterday shared, which was
28 something that, for me, was really telling, a particular memo from 2001 that then-
29 Councilmember Ike Leggett, who now is the Executive, was actually calling for this same
30 exact remedy, if you will, to make the Office of the Inspector General, in many ways,
31 whole, and there was a letter supporting that from the late Marilyn Praisner and the late
32 Blair Ewing. So, this is something that's been going on for quite a while, and I think there's
33 been a lot of conversation about the notion that this is just truly making this office whole,
34 and I think taxpayers would be very grateful that this is something that the Council is
35 taking on, so I hope that we're able and ready to vote on it next week. Thank you.

36
37 COUNCIL PRESIDENT ANDREWS:

38 Thank you, Councilmember Navarro. Councilmember Floreen.

39
40 COUNCILMEMBER FLOREEN:

41 Thank you. I just want to follow up with an earlier colloquy you had. Maybe it was with Mr.
42 Elrich. Did you say that you have asked the County Attorney to permit you to acquire
43 outside assistance, legal assistance, and that request has not been provided? The legal
44 assistance has not been provided because it hasn't been in writing?



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1
2 THOMAS DAGLEY:

3 There have been at least two occasions, none formally in writing, that have been
4 discussed between the County Attorney and myself where we've discussed the value and
5 the importance of ensuring that the OIG has independent counsel on specific cases.
6

7 COUNCILMEMBER FLOREEN:

8 So, does that mean that you've requested outside legal assistance?
9

10 THOMAS DAGLEY:

11 Yes. It does.
12

13 COUNCILMEMBER FLOREEN:

14 And has outside legal assistance been provided?
15

16 THOMAS DAGLEY:

17 No.
18

19 COUNCILMEMBER FLOREEN:

20 No. Well, I mean, that's quite remarkable, and that's reason why we need to enact this bill.
21

22 COUNCIL PRESIDENT ANDREWS:

23 Thank you, Councilmember Floreen. Council Vice President Berliner.
24

25 COUNCIL VICE PRESIDENT BERLINER:

26 I was struck by the same colloquy, so I just want to make sure that I understand it. I think I
27 do now, and I hadn't before, and so I appreciate my colleagues' initiative in this regard.
28 What I hear you saying, in effect, is that for you to feel as though you are in a position to
29 formally request--and, typically, when one does that, one does put it in writing--that by
30 definition, you would be putting in writing that which you perceive to be an untenable
31 position to begin with, which is that you are going to be investigating somebody in the
32 Executive branch and that you are forced to put in writing details with respect to that that
33 you feel is inappropriate to share with the executive branch, given that you are going to be
34 investigating the Executive branch. Do I understand that correctly?
35

36 THOMAS DAGLEY:

37 That would be a good hypothetical scenario. There are examples. Because most of the
38 money appropriated by the Council is spent by the Executive branch or by those Council-
39 funded organizations where the CEO, the chairman are making the funding decisions,
40 yes, to the extent that the County Attorney's Office is the only, right now, source that I can
41 go to to get that legal service, I have to make a decision on each and every one of those
42 cases how far I want to go, how far I need to go in terms of discussing it face to face or
43 putting it in writing, and up to this point, I have not put it in writing, believing that the
44 memorandum or the formal request would fall short of the details that would need to be



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1 provided and, in many cases, have been provided verbally in a confidential type of a
2 setting. So, the value-- I could be wrong. The value of putting it formally but briefly in
3 writing, I have not seen that value up to this point.

4
5 COUNCIL VICE PRESIDENT BERLINER:

6 So, this is, in your judgment, a fundamental structural flaw in the current situation that
7 suggests very strongly to you that the way to address it is through your own ability without
8 having to go to the County Attorney for permission for you to use your judgment as to
9 when this resource is appropriate for you to obtain for purposes of investigating situations
10 in the Executive branch or elsewhere.

11
12 THOMAS DAGLEY:

13 I would make two points, one being that the IG community, as I refer to it-- other IGs,
14 federal, state, and local--my experience has been that they have been through this
15 process before, and before it's over--it may take place at different stages within kind of the
16 maturation of an IG's environment--before it's over, all that I know that are statutory now
17 have access, too, and there may be some exceptions that I'm not aware of, but they
18 routinely have access to independent counsel. Many of them, because of their size, it's
19 counsel that is permanently on staff. That's not appropriate, in my view, in Montgomery
20 County. We currently have 3.5 work years, but, nonetheless, the need exists on many
21 cases. The other example would be where, in addition to the IG community, it does need
22 to be on a case-by-case basis, and I think we may have some options that I would like to
23 explore. Oftentimes, the value of that independent counsel is not needed for the entire
24 case, the entire project. It may be for a couple of hours at a time at the front end of a
25 process to make sure that we get it right, to make sure that the strategies and the
26 planning efforts are good, but that's not to suggest that full-time counsel would be needed
27 throughout the life of a multimonth project, and that's important in terms of how it would
28 actually be implemented.

29
30 COUNCIL VICE PRESIDENT BERLINER:

31 Thank you, sir.

32
33 COUNCIL PRESIDENT ANDREWS:

34 Thank you, Council Vice President Berliner. Councilmember Leventhal.

35
36 COUNCILMEMBER LEVENTHAL:

37 Thank you. The conversation about the meeting that the HHS and MFP Committees are
38 gonna have on October 29 is not really directly related to this bill, but since it has been
39 discussed and my good friend Councilmember Navarro asked some questions about it,
40 I'm just gonna take the opportunity to clarify further because it is certainly the case that it
41 is the executive branch's responsibility to monitor contracts. It is also well known to us, to
42 our service providers, and to the press that this year, there was a sequence of events
43 where the Inspector General brought to the attention of the departments his judgment that
44 there were shortcomings in contract monitoring. Examples of the shortcomings came to



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1 light involving specific service providers. The consequences for the service providers on
2 whom a bright light was shone have been dramatic, and other service providers, aware of
3 that sequence of events, are, number one, feeling considerable anxiety about whether Mr.
4 Dagley is looking into them next and, number two, are feeling heavily burdened by a new
5 set of compliance requirements--invoicing, paperwork--that didn't exist prior, and so all of
6 those issues are related, and I know that those service providers will find it useful to hear
7 from the departments which are directly responsible, both HHS and General Services, but
8 I know they will also find it useful to hear directly from Mr. Dagley because many of them
9 who have not already been reviewed by Mr. Dagley are aware that at some point in the
10 future, they might be and they have some concerns about that, and so I do think it is
11 helpful for them to hear from the departments as well as from Mr. Dagley, and I appreciate
12 the effort that he and the departments are going to make to make sure they're all on the
13 same page and that the message that they're conveying is consistent, but I have heard,
14 and I know other colleagues have heard, a great deal of concern and anxiety right now
15 among nonprofit service providers who are already trying to cope with a very difficult
16 economic environment, and at the same time as their revenues are down--their private
17 charitable contributions are down--the needs are greater. The client requests are greater.
18 The demands for service are greater, and at the same time as all this is going on, the
19 expectation of invoicing and paperwork and receipts and, you know, sort of a new mode of
20 auditing and compliance has suddenly been imposed, and that's causing, you know, a
21 great deal of concern in the nonprofit community. So, my hope is that the conversation on
22 October 29 will assist in allaying some concerns and clarifying and maybe even perhaps
23 streamlining our understanding of what compliance involves because as it's been
24 described to me by some of these service providers, the amount of documentation that
25 they're now being told they have to produce, I don't think most auditors would require, but
26 that's something we can find out more about. In addition, it'll probably be a two-way
27 conversation. It's likely that the service providers themselves will, some of them, express
28 at that meeting the concerns that they've been expressing to me and, I believe, to other
29 councilmembers. So, it should be a lively discussion, but I hope it will be constructive, but
30 again, I'm grateful to Mr. Dagley for participating in it. I do think your role in it is quite vital.

31
32 COUNCIL PRESIDENT ANDREWS:

33 OK. Thank you, Councilmember Leventhal, and thanks, everybody. That concludes this
34 afternoon session of the Council, and the PHED Committee will now have its daily
35 meeting.

36
37 COUNCILMEMBER KNAPP:

38 We'll wait till 20 after so everyone can kind of clear out and we can make the appropriate
39 transitions. So, we'll take a couple minutes.